

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Joseph Hennessy	Team: Squad #12	CCRB Case #: 202102542	<input checked="" type="checkbox"/> Force <input type="checkbox"/> Discourt. <input checked="" type="checkbox"/> U.S. <input type="checkbox"/> Abuse <input type="checkbox"/> O.L. <input checked="" type="checkbox"/> Injury
Incident Date(s) Saturday, 04/24/2021 10:50 PM	Location of Incident: Elizabeth Street and Bayard Street	18 Mo. SOL 10/24/2022	Precinct: 05
Date/Time CV Reported Sun, 04/25/2021 12:07 AM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Sun, 04/25/2021 12:07 AM

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Richard Cho	00900	932461	MTS PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Brittany Lormel	24755	955095	MTS PCT
2. LT Daniel McKeefrey	00000	947243	005 PCT
3. POF Regina Mcneil	19199	962605	MTS PCT
4. POM Nicholas Reeves	30719	967284	005 PCT
5. POF Mariama Diallo	07690	966029	MTS PCT

Officer(s)	Allegation	Investigator Recommendation
A . SGT Richard Cho	Force: Sergeant Richard Cho used physical force against § 87(2)(b)	
B . SGT Richard Cho	Force: Sergeant Richard Cho used physical force against § 87(2)(b)	
C . SGT Richard Cho	Untruthful Stmt.: Sergeant Richard Cho provided a misleading official statement to the CCRB.	

Case Summary

On April 26, 2021, § 87(2)(b) filed this complaint with the CCRB via the CCRB website.

On April 24, 2021, at approximately 10:50 p.m., § 87(2)(b) encountered officers at a police barricade at Elizabeth Street and Bayard Street in Manhattan as she was returning to her apartment on Elizabeth Street. The barrier blocked the Bayard Street entrance of Elizabeth Street and had been placed there in anticipation of protests. Sgt. Richard Cho informed § 87(2)(b) that she could not enter the street without identification. After Sgt. Cho moved the barricade so that a police vehicle could turn onto Elizabeth Street, § 87(2)(b) moved past the barricade and inside the restricted area of Elizabeth Street. Sgt. Cho grabbed § 87(2)(b) lifted her, and carried her outside of the restricted area (**Allegation A – Force: Physical Force**, § 87(2)(g)). After Sgt. Cho moved § 87(2)(b) outside of the restricted area, he held onto her wrist and twisted the skin on her wrist (**Allegation B – Force: Physical Force**, § 87(2)(g)). Officer Brittany Lormel and Officer Mariama Diallo arrived and removed Sgt. Cho's hands from § 87(2)(b) wrist. Officer Lormel and Officer Diallo escorted § 87(2)(b) to the 5th Precinct stationhouse to file a complaint. § 87(2)(b) was not arrested or issued any summonses.

On May 20, 2020, Sgt. Cho provided a false official statement to the CCRB (**Allegation C – Untruthful Statement: Misleading Official Statement**).

The investigation obtained BWC footage from Officer Nicholas Reeves that captured parts of the incident (Board Review 08; summarized in Board Review 14). The investigation also obtained cell phone footage of the incident recorded by § 87(2)(b) (Board Review 09; summarized in Board Review 15).

Findings and Recommendations

Allegation (A) Force: Sergeant Richard Cho used physical force against § 87(2)(b)

§ 87(2)(b) was interviewed on April 29, 2021 (Board Review 01). On April 24, 2021, at approximately 10:50 p.m., § 87(2)(b) was returning to her apartment, § 87(2)(b) in Manhattan and saw a barricade that was blocking the Bayard Street entrance of Elizabeth Street. Sgt. Richard Cho was standing behind the barricade. § 87(2)(b) said to Sgt. Cho that she needed to pass through the barricade to access her apartment building. Sgt. Cho asked if she had identification. When § 87(2)(b) said that she did not have identification, Sgt. Cho stated that she could not pass the barricade. At no point did § 87(2)(b) try and walk past the barricade. A police vehicle turned off Bayard Street onto Elizabeth Street. Sgt. Cho moved the barricade to allow the truck through. § 87(2)(b) stepped aside to make way for the truck. § 87(2)(b) was less than one foot away from Sgt. Cho. Sgt. Cho grabbed § 87(2)(b) left wrist with his right hand and moved her wrist behind her back. Sgt. Cho twisted one or both of his hands around the skin on § 87(2)(b) left wrist. Officer Brittany Lormel and Officer Mariama Diallo ran towards Sgt. Cho and § 87(2)(b). Officer Lormel and Officer Diallo yelled at Sgt. Cho to release § 87(2)(b). Officer Lormel and Officer Diallo both physically pulled Sgt. Cho from § 87(2)(b) but Officer Lormel was primarily responsible for removing Sgt. Cho. Officer Lormel physically placed herself between § 87(2)(b) and Sgt. Cho. Sgt. Cho let go of § 87(2)(b) and Officer Lormel and Officer Diallo escorted § 87(2)(b) to the 5th Precinct stationhouse so that she could file a complaint about the incident. § 87(2)(b) sustained bruises on her back and left wrist and went to a hospital where she was x-rayed. § 87(2)(b) vomited several times in the days afterwards, which a doctor stated may have been because of her incident with police.

Sgt. Richard Cho provided a statement to the CCRB on May 20, 2021 (Board Review 02). On April 24, 2021 at approximately 10:50 p.m., Sgt. Cho was supervising the barricaded Bayard Street entrance of Elizabeth Street in Manhattan. The block was “frozen,” which meant that entry was restricted to NYPD personnel and individuals who resided on the block. Sgt. Cho explained that the barricades had been erected to protect the 5th Precinct stationhouse from anticipated protests. § 87(2)(b) approached the barricade and told Sgt. Cho to let her through. Sgt. Cho told her that he could not let her in without an ID. § 87(2)(b) became combative, which Sgt. Cho described as meaning that she would not listen to him and she did not say anything other than demanding that he open the barriers. Sgt. Cho believed that § 87(2)(b) was intoxicated because she was being, as he described, combative, she was holding a glass bottle of hard liquor and because he could smell alcohol coming from her body. Sgt. Cho did not know what type of alcohol § 87(2)(b) was holding. Nothing else made Sgt. Cho believe that she was intoxicated. Sgt. Cho explained that the orders issued to him meant that if someone did not have proof that they lived on the block, he could not let them in. A police car stopped on the corner of Bayard Street and Elizabeth Street. Sgt. Cho opened the barricade. When the barrier was open 10-15 degrees, § 87(2)(b) walked quickly or ran one foot or less to the right of Sgt. Cho. Sgt. Cho placed his arms around her waist, with his torso in contact with her back, and laced his fingers together before picking her up. Sgt. Cho turned 180 degrees and walked one step through the open barricade before placing § 87(2)(b) on her feet on the non-restricted side of the barricade.

Sgt. Cho’s memo book from the date of the entry (Board Review 05) contained an entry related to this incident. The entry lists the 10:51 p.m. as the time arrived and lists 10-52 (NYPD radio code for dispute) as the radio code. The final disposition is listed as 10-93C (NYPD radio code for crime report prepared, no arrest made). The entry lists a Threat, Resistance, and Injury (TRI) form under the form type section. Attached to his digital memo book entry is a photograph of § 87(2)(b) passport photo page and an iPhone screenshot of Job § 87(2)(b). Job § 87(2)(b) was generated when § 87(2)(b) called 911 to report that Sgt. Cho was refusing to allow her to enter Elizabeth Street. No narrative information is listed.

Officer Brittany Lormel provided a statement to the CCRB on May 20, 2021 (Board Review 03). On April 24, 2021, at approximately 10:50P.M., Officer Lormel was sitting in a police van with Officer Mariama Diallo and two other officers at the Bayard Street entrance of Elizabeth Street in Manhattan. A police barricade was erected that prevented people from turning from Bayard Street onto Elizabeth Street. Officer Lormel heard a noise that sounded like a bottle breaking. Officer Lormel looked out of the window to her left and saw Sgt. Cho and § 87(2)(b) whom she recognized as an individual who lived in the restricted area of Elizabeth Street because she had seen § 87(2)(b) twice earlier in the day. Sgt. Cho had his torso in contact with § 87(2)(b) back, his arms wrapped around her arms with her arms pinned to her sides, and his hands grasping his forearms around her stomach. Sgt. Cho and § 87(2)(b) were on the side of Elizabeth Street that was in the restricted area behind the police barricade. Sgt. Cho carried § 87(2)(b) through the opening in the barriers, walked five feet and placed § 87(2)(b) on her feet outside of the restricted area of the block.

Officer Lormel’s memo book does not contain any entries regarding this incident (Board Review 06).

Officer Mariama Diallo provided a statement to the CCRB on June 15, 2021 (Board Review 04). Officer Diallo’s statement is consistent with Officer Lormel’s.

Officer Diallo’s memo book does not contain any entries regarding this incident (Board Review 07).

The BWC footage obtained from Officer Nicholas Reeves does not depict the physical interaction alleged by § 87(2)(b) (Board Review 08). Sgt. Cho, Officer Diallo, and Officer Lormel did not generate BWC footage during this interaction.

§ 87(2)(b) provided the investigation with cell phone footage she recorded does not depict the physical interaction alleged by § 87(2)(b) (Board Review 09).

Patrol Guide Procedure 221-01 (Board Review 17) explains that force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. When appropriate and consistent with personal safety, members of the service will use de-escalation techniques to safely gain voluntary compliance from a subject to reduce or eliminate the necessity to use force. In situations in which this is not safe and/or appropriate, [members of service] will use only the reasonable force necessary to gain control or custody of a subject. The actions taken by the subject, among other factors, is used to determine the reasonableness of force.

§ 87(2)(b) alleged attempt to bypass the police barricade at Elizabeth Street without showing identification is the main factor that is relevant to making a determination about the reasonableness of Sgt. Cho lifting § 87(2)(b) and removing her from the restricted area of Elizabeth Street.

§ 87(2)(b) denied attempting to bypass the police barricade at any point during this interaction. However, considering Officer Lormel's forthcoming testimony regarding the actions of her commanding Officer Sgt. Cho, the investigation credits Officer Lormel's account of this incident, wherein Sgt. Cho and § 87(2)(b) were on the side of Elizabeth Street that was in the restricted area behind the police barricade when Sgt. Cho initiated physical contact with § 87(2)(b). By virtue of this, the investigation concludes that § 87(2)(b) did attempt to bypass the police barricade at Elizabeth Street.

The investigation credits Officer Lormel's assertion that Sgt. Cho wrapped his arms around § 87(2)(b) body, lifted her off her feet, and carried her approximately five feet before placing her on the ground outside of the restricted area.

Given the fact that Sgt. Cho explained to § 87(2)(b) that she could not enter Elizabeth Street without identification, and § 87(2)(b) still attempted to bypass the police barricade, § 87(2)(g)

§ 87(2)(g)

The length of the force Sgt. Cho used was short and specifically focused for the purpose of removing § 87(2)(b) from the restricted area of Elizabeth Street. Sgt. Cho ceased holding § 87(2)(b) when she was no longer inside the restricted area and Sgt. Cho had fulfilled the purpose for which he had initiated his use of force. Sgt. Cho's force was not injurious by nature. § 87(2)(g)

Allegation (B) Force: Sergeant Richard Cho used physical force against § 87(2)(b)

As discussed in Allegation A, § 87(2)(b) alleged that Sgt. Cho grabbed her left wrist with his right hand, moved her wrist behind her back, and twisted one or both of his hands around the skin on § 87(2)(b)

§ 87(2)(b) left wrist.

Sgt. Cho stated that after placing § 87(2)(b) on the ground outside of the restricted area, Sgt. Cho physically separated from § 87(2)(b). After separating from her, Sgt. Cho did not make any further physical contact with § 87(2)(b). When Sgt. Cho placed § 87(2)(b) on the ground, other officers including Officer Lormel came over to Sgt. Cho and § 87(2)(b). Sgt. Cho did not remember twisting any skin on either of her arms.

Officer Lormel stated that after Sgt. Cho placed § 87(2)(b) on the ground outside of the restricted area, she believed that § 87(2)(b) was far enough from the barriers to not be in violation of entering the restricted zone. Sgt. Cho held onto § 87(2)(b) left arm with both hands. Sgt. Cho's left hand was around § 87(2)(b) forearm and his right hand was around § 87(2)(b) wrist. Sgt. Cho was twisting and squeezing the skin on § 87(2)(b) left arm. § 87(2)(b) was pulling away from Sgt. Cho, but she was not swinging or kicking. Officer Lormel and the other officers inside the vehicle exited the vehicle and ran towards Sgt. Cho and § 87(2)(b). Officer Lormel said to Sgt. Cho that he was hurting § 87(2)(b) that she knew that § 87(2)(b) lived on the block, and that he needed to let go of § 87(2)(b) arm. Officer Lormel told Sgt. Cho to let go because § 87(2)(b) said that she was in pain and because Sgt. Cho's grip was tight. Officer Lormel repeatedly told Sgt. Cho to let go of § 87(2)(b). Officer Diallo held § 87(2)(b) arm and told Sgt. Cho to let go of § 87(2)(b). § 87(2)(b) said several times that Sgt. Cho was hurting her and that she had pain in her arm. Officer Lormel physically pried Sgt. Cho's fingers off § 87(2)(b) arm with her fingers, and she could tell by feel that Sgt. Cho's grip was very tight. Sgt. Cho let go of § 87(2)(b) after no more than five minutes from the moment that Officer Lormel saw him in physical contact with § 87(2)(b). § 87(2)(b) did not see Sgt. Cho move § 87(2)(b) wrist behind her back at any point.

Officer Diallo stated that when Sgt. Cho and § 87(2)(b) were outside of the restricted area of Elizabeth Street, Sgt. Cho had his arms wrapped around § 87(2)(b) torso and at some point held onto one of her arms with his hands. Officer Diallo attempted to use her hands to remove Sgt. Cho's hands from § 87(2)(b) wrist. Officer Diallo stated that she did not know if she or any other officer issued Sgt. Cho a command or made any statements to him.

Although Sgt. Cho denied that he made any physical contact with § 87(2)(b) after removing her from the barricaded area, Officer Lormel and § 87(2)(b) both testified that Sgt. Cho twisted the skin on § 87(2)(b) left arm. Because § 87(2)(b), Officer Lormel, and Officer Diallo provided similar statements about Sgt. Cho's use of force, the investigation credits Officer Lormel's assertion that Sgt. Cho twisted the skin on § 87(2)(b) arm after he had removed her from the restricted area of Elizabeth Street.

Patrol Guide Procedure 221-01 (Board Review 17) explains that force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody.

As § 87(2)(b) was no longer in the restricted area of Elizabeth Street, it was no longer necessary for Sgt. Cho to remove § 87(2)(b) from this area. Sgt. Cho denied that he performed this action and provided no explanation for his use of force. None of the witness officers testified that there was any concern for the safety of any officers or civilians nor did they testify that there was a need to place or keep § 87(2)(b) in custody. Indeed, that both Officer Lormel and Officer Diallo used physical force to remove Sgt. Cho from § 87(2)(b) indicates a concern for her safety at the hands of Sgt. Cho. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation (C) Untruthful Statement: Sergeant Richard Cho provided a misleading official statement to the CCRB.

In his statement to the CCRB, Sgt. Cho stated that after he placed § 87(2)(b) on the ground outside of the restricted area, he physically separated from § 87(2)(b). After separating from her, Sgt. Cho did not make any further physical contact with § 87(2)(b). Sgt. Cho stated that he did not remember twisting any skin on either of her arms.

Officer Lormel testified that she repeatedly told Sgt. Cho to let go of § 87(2)(b). Officer Diallo held § 87(2)(b) arm and told Sgt. Cho to let go of § 87(2)(b). § 87(2)(b) said several times that Sgt. Cho was hurting her and that she had pain in her arm. Officer Lormel physically pried Sgt. Cho's fingers off § 87(2)(b) arm with her fingers, and she could tell by feel that Sgt. Cho's grip was very tight. Officer Lormel and Officer Diallo then escorted § 87(2)(b) into the restricted area of Elizabeth Street and to the 5th Precinct stationhouse to file a complaint regarding Sgt. Cho.

Officer Diallo testified that she attempted to use her hands to remove Sgt. Cho's hand from § 87(2)(b) arm. § 87(2)(b) said that she wanted to speak to a police officer of a higher rank than Sgt. Cho. Officer Diallo and Officer Lormel walked with her to the 5th Precinct stationhouse in the restricted area of Elizabeth Street.

As discussed in Allegation B, Officer Lormel and Officer Diallo affirmed that they witnessed Sgt. Cho twist the skin on § 87(2)(b) arm as alleged by § 87(2)(b). As such, the investigation determined that Sgt. Cho did twist the skin on § 87(2)(b) wrist after placing her on the ground outside of the restricted area of Elizabeth Street.

Patrol Guide Procedure 203-08 (BR16) defines a misleading statement as a statement that is intended to misdirect the finder, and materially alter the narrative by:

- a) Intentionally omitting a material fact or facts,
- b) Making repeated claims of "I do not remember" or "I do not know" when a reasonable person under similar circumstances would recall, or have been aware of, such material facts, or
- c) Altering and/or changing a member's prior statement or account when a member of the service is confronted with independent evidence indicating that an event did occur as initially described, will generally be considered a misleading statement

Sgt. Cho stated that he did not make further contact with § 87(2)(b) after placing her on the ground outside of the restricted area of Elizabeth Street. Sgt. Cho also stated that he did not remember twisting any skin on either of § 87(2)(b) arms. § 87(2)(g)

First, we have a situation where Officer Lormel issued commands to her supervisor to get him to cease his action against § 87(2)(b). And while officers may routinely use force against civilians in the course of their duties, it is not usual for officers to not only tell an officer to cease their use of force but to use force against another officer to get them to stop using force against a civilian. Secondly, the incident ended with Officer Diallo and Officer Lormel bringing § 87(2)(b) into the restricted area in contravention of Sgt. Cho's efforts to remove § 87(2)(b). Even if Sgt. Cho did not learn that Officer Lormel and Officer Diallo took § 87(2)(b) to the stationhouse for the purpose of filing a complaint against him, the mere fact that these subordinate officers contradicted his verbal commands to § 87(2)(b) and his

physical efforts to remove her is memorable. Finally, that Sgt. Cho was able to recall numerous details about the incident, including observations about § 87(2)(b) level of intoxication and specific items that were in her hand, calls into question his later claims that he did not recall his later use of force and the highly unique circumstances surrounding this use of force.

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 11).
- Sgt. Cho has been a member of service for 18 years and has been a subject in seven CCRB complaints and sixteen allegations, none of which were substantiated. § 87(2)(g)

Mediation, Civil, and Criminal Histories

- As per the ongoing mediation moratorium, § 87(2)(b) was not offered mediation.
- As of May 19, 2021, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards this to complaint (Board Review 12).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad: 12

Investigator: Joseph Hennessy Investigator Joseph Hennessy November 5, 2021
Signature Print Title & Name Date

Squad Leader: Carlmais Johnson IM Carlmais Johnson November 9, 2021
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date